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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 WILLIE KWAN,

11 Plaintiff,

12 vs.

13 WELLS FARGO BANK, N.A.,
14 individually and as successor by
15 merger to AMERICA'S SERVICING
16 COMPANY, a National Association;
17 MORTGAGE ELECTRONIC
18 REGISTRATION SYSTEMS, INC., a
19 Delaware Corporation;
20 CARRINGTON MORTGAGE
21 SERVICES, LLC, a Delaware Limited
22 Liability Company; ALL PERSONS
23 UNKNOWN CLAIMING ANY
24 LEGAL OR EQUITABLE RIGHT,
25 TITLE, ESTATE LIEN OR
26 INTEREST IN THE PROPERTY
27 DESCRIBED IN THE COMPLAINT
28 ADVERSE TO PLAINTIFF'S TITLE
THERE TO; and DOES 1-100,
inclusive,

Defendants.

CASE NO. 12CV1793-GPC(MDD)

ORDER *SUA SPONTE*
DISMISSING SECOND AMENDED
COMPLAINT FOR LACK OF
SUBJECT MATTER
JURISDICTION

On July 20, 2012, Plaintiff filed a complaint alleging thirteen causes of actions under federal and state law concerning the validity of his mortgage loan. (Dkt. No. 1.) On October 22, 2012, District Judge Gonzalez denied as moot Defendants' motion to dismiss and motion to strike and granted Plaintiff's motion for leave to file an amended complaint. (Dkt. No. 17.) On October 29, 2012, Plaintiff filed a first amended

1 complaint alleging six causes of action under federal and state law. (Dkt. No. 18.) On
 2 December 6, 2012, the case was transferred to the undersigned judge. (Dkt. No. 26.)
 3 On July 23, 2013, the Court granted Defendants' motion to dismiss and denied as moot
 4 Defendants' motion to strike and granted Plaintiff leave to file a second amended
 5 complaint. (Dkt. No. 34.) On September 27, 2013 the Court held an order to show
 6 cause hearing for Plaintiff's failure to file a second amended complaint. (Dkt. No. 41.)
 7 At the order to show cause hearing, both counsel appeared and the Court accepted the
 8 proposed second amended complaint by Plaintiff. (*Id.*) On September 26, 2013, the
 9 second amended complaint ("SAC") was filed. (Dkt. No. 40.) The SAC alleges two
 10 causes of action for negligence and breach of contract. (*Id.*) On October 25, 2013,
 11 Defendants filed a motion to dismiss the SAC based on the two state causes of action.
 12 (Dkt. No. 42.) An opposition and reply were filed. (Dkt. Nos. 44, 45.)

13 Discussion

14 The federal court is one of limited jurisdiction and the burden rests on the party
 15 asserting jurisdiction. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375,
 16 377 (1994). It possesses only that power authorized by the Constitution or a statute.
 17 See Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541 (1986). It is
 18 constitutionally required to raise issues related to federal subject matter jurisdiction,
 19 and may do so *sua sponte*. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 93–94
 20 (1998); see Nevada v. Bank of America Corp., 672 F.3d 661, 673 (9th Cir. 2012) (it
 21 is well established that "a court may raise the question of subject matter jurisdiction,
 22 *sua sponte*, at any time during the pendency of the action, even on appeal.")
 23 Accordingly, federal courts are under a continuing duty to confirm their jurisdictional
 24 power and are "obliged to inquire *sua sponte* whenever a doubt arises as to [its]
 25 existence" Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278
 26 (1977) (citations omitted). "If the court determines at any time that it lacks subject-
 27 matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

28 There are two bases for federal subject matter jurisdiction: (1) federal question

1 jurisdiction under 28 U.S.C. § 1331; and (2) diversity jurisdiction under 28 U.S.C. §
2 1332. A district court has federal question jurisdiction in “all civil actions arising
3 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A
4 district court has diversity jurisdiction “where the matter in controversy exceeds the
5 sum or value of \$75,000, . . . and is between --citizens of different states, or citizens
6 of a State and citizens or subjects of a foreign state . . .” 28 U.S.C. § 1332(a)(1)-(2).


7 The SAC alleges jurisdiction is invoked under federal question pursuant to 28
8 U.S.C. §§ 1331 (federal question), 1343 (civil rights), 2201 (declaratory judgment),
9 2202 (declaratory judgment), 15 U.S.C. § 1692 (Fair Debt Collection Practices Act),
10 and 42 U.S.C. § 1983 (civil rights). (Dkt. No. 40, SAC ¶¶ 3, 5.) The SAC does not
11 assert any cause of action under a federal statute. The second amended complaint
12 alleges only two state law causes of action for negligence and breach of contract.
13 Moreover, plaintiff has not demonstrated or alleged diversity jurisdiction.
14 Accordingly, the Court concludes that it does not have subject matter jurisdiction over
15 the SAC.

16 Conclusion

17 Based on the above, the Court DISMISSES without prejudice the second
18 amended complaint for lack of subject matter jurisdiction.

19 IT IS SO ORDERED.

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21 DATED: January 17, 2014

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23 HON. GONZALO P. CURIEL
24 United States District Judge
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